

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:16-cv-417-GCM  
(3:00-cr-174-GCM-1)**

<b>LAMONT MAURICE GAITHER,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	
<hr/>	)	

**THIS MATTER** is before the Court on the Government’s Motion to Stay Proceedings on Motion Under 28 U.S.C. § 2255, (Doc. No. 7).

Petitioner, who is represented by counsel, challenges his conviction and sentence on the grounds that 18 U.S.C. § 924(c) is unconstitutionally vague. (Doc. No. 1). The Court stayed these proceedings on November 14, 2016, pending the Fourth Circuit Court of Appeals’ decisions in United States v. Ali, No. 15-4433 and United States v. Simms, No. 15-4640. (Doc. No. 5). On January 24, 2019, the Fourth Circuit issued its opinion in Simms and held that § 924(c) is unconstitutionally vague. 914 F.3d 229 (4<sup>th</sup> Cir. 2019).

The Government now asks that the Court continue to stay these proceedings because the question of § 924(c)’s constitutionality is before the United States Supreme Court on certiorari review in United States v. Davis, No. 18-431, which is scheduled for oral argument on April 17, 2019. Petitioner’s counsel does not oppose the requested stay. (Doc. No. 7 at 2).

The stay will be granted because the issues to be decided in Davis may be dispositive of Petitioner’s claim for relief. In light of these factors, and in the absence of opposition from Petitioner, the Court finds it is in the interest of judicial economy to grant the Government’s

Motion.

**IT IS, THEREFORE, ORDERED** that:

1. The Government's Motion to Hold Petitioner's Motion to Vacate in Abeyance, (Doc. No. 7), is **GRANTED**.
2. This case is held in abeyance pending the United States Supreme Court's decision in United States v. Davis, No. 18-431. The Government shall have **60 days** following the United States Supreme Court's issuance of its decision in Davis to file an answer, motion, or other response to Petitioner's § 2255 Motion to Vacate.

Signed: March 26, 2019

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

